BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HENRY M. MURRAY)

For Appellant: Henry M. Murray, in pro. Per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action Of the 'Franchise Tax Board on the protest of Henry M. Murray against proposed assessments of additional personal income tax in the amounts of $342.43 and $281.07 for the years 1972 and 1973, respectively.

The primary-question for decision is whether respondent's proposed assessments'based upon federal audit adjustments were proper.

Appellant and his former wife, Alberta, were divorced in 1965, and custody of their daughter, Sandra, was granted to Alberta. During 1972 and 1973 appellant resided in San Francisco, California, where he was employed as a social worker. Alberta lived in Redding, California. In 1973 Sandra was single and attended Humboldt State University in Arcata, California. She apparently resided with her mother when she was not away at school.

Appellant filed his federal and state income tax returns for the years 1972 and 1973 as a head of household, claiming that his daughter, Sandra, entitled him to that status. The Internal Revenue Service audited appellant's federal returns and made various adjustments, including the disallowance of his claimed head of household status for both years. The federal revenue agent determined that appellant did not qualify as a head of household in 1972 because he had failed to establish that he was entitled to a denendencv exemption for Sandra in that year, and that he was ineligible in 1973 because Sandra had not lived with him during that year.

Upon receipt of the federal audit report, respondent made corresponding adjustments in appellant's California personal income tax liability for 1972 and 1973, to the extent there was conformity between the state and federal laws. of those various adjustments, appellant's only dispute appears to be with the disallowance of his claimed head ofhousehold status in each year. He also contends that it 'was improper for respondent to use confidential information contained in his federal income tax returns as a basis for its deficiency assessments.

We have often observed that a proposed assessment issued by respondent on the basis of a federal audit is presumed correct, and the burden is on the taxpayer to prove it erroneous. (Rev. & Tax. Code, § 18451; Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 4141 (1949); Appeal of James A. MacDonald, Cal. St. Bd. of Equal., June 8, 1977; Appeal of Nicholas H. Obritsch, Cal. St. Rd. of Equal., Feb. 17, 1959.) In the instant appeal that rule certainly applies with respect to respondent's assessment for the year 1973.' The federal basis for denial of appellant's claimed head of household status in that year was that appellant had failed to establish

that the household he maintained as his home was the principal place of abode of his daughter, Sandra, in that year, as required under both federal and California law. (Int. Qev. Code of 1954, § 2(b)(l)(A): Rev. & Tax. Code, § 17042, subd. (a).) Appellant has made no attempt to show that Sandra ever resided with him in San Francisco during 1973. He therefore has failed to show error either in the federal determination or in respondent's proposed assessment for 197.3 based thereon.

Our review of the denial of appellant's head of household status for the taxable year 1972 requires a slightly different analysis. The federal auditor's stated reason for denying anpellant's head of household status in 1972 was that appellant had failed to establish that he was entitled to claim Sandra as a dependent in that year. Neither the federal income tax law nor the conforming California provision defining head of household requires that an individual qualifying a taxpayer as head of household be a "dependent', for purposes of the dependency exemption or credit, where that qualifying individual is an unmarried son or daughter. (See Int. Rev. Code of 1954 2(b)(1)(A)(i) and Rev. & Tax. Code, § 17042, subd. (a&.) The pertinent federal and state regulations specifically note the absence of any such requirement. (Treas. Reg. § 1.2-2(b)(3)(i); Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. '(a)(B)'(i).) That being so, whether or not Sandra qualified as appellant's dependent in 1972 was irrelevant, and the Internal Revenue Service's denial of appellant's status as head of household on that basis was incorrect as a matter of law.

Although respondent's corresponding adjustment purported to be based upon the federal determination, respondent has asserted an alternative ground for denial of appellant's claimed head of household status in 1972. Respondent contends that, as was the case in 1973, appellant has not established that Sandra lived with him in 1972. As we noted above; the taxpayer's maintenance as his home of a household constituting the principal place of abode of the qualifving son or daughter clearly is a requirement under both federal and state laws defining head of household status. We agree with respondent that appellant has failed to establish that he met this statutory requirement in 1972, and respondent's denial of head of household status for that year must also be sustained.

Finally, in reference to appellant's contention that respondent improperly obtained confidential information contained in his federal income tax returns, we call his attention to section 6103(b)(2) [now section 6103(d) 1

of the Internal Revenue Code of 1954. During the appeal years that section provided that income tax returns filed with the Internal Revenue Service may be inspected by any state agency charged with the administration of any state tax law, if the inspection is for the purpose of such administration. The information concerning the adjustments to appellant's federal income tax returns for 1972 and 1973 was obtained pursuant to an exchange of information agreement executed by respondent and the Internal Revenue Service, under the authority of the above mentioned federal statute. Clearly there was no impropriety in respondent's use of such information as a basis for the proposed assessments here in question.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause anpearing therefor,

IT IS HEREBY ORDFRED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Henry M. Murray against proposed assessments of additional personal income tax in the amounts of $342.43 and $281.07 for the years 1972 and 1973, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of October, 1978, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member